

Attorneys for Def. Fluor Hanford, Inc.

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**UNITED STATES DISTRICT JUDGE
The Honorable EDWARD F. SHEA**

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

Duane Hall, Plaintiff)	No.: CV-08-5029-EFS
)	
vs.)	Protective Order
)	Pursuant to Stipulation of the Parties
Fluor Hanford, Inc., Defendant)	
_____)	

THIS MATTER came before the Court on the parties' Stipulated Motion for Protective Order. The Court has been fully advised.

THE COURT FINDS:

1. Good cause exists for granting the stipulated motion and issuing a protective order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

1. The Court GRANTS the parties' stipulated motion (Ct. Rec. 74).
2. **Documents.** The word "documents" means all written, recorded or graphic matter whatsoever, including, but not-limited to, interrogatory answers, demands to admit and responses thereto, documents produced by any party or non-party in this action whether pursuant to Fed. R. Civ. P. 34, subpoena, or by

**Protective Order Pursuant to
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1 agreement, deposition transcripts and exhibits, and any portions of any court
2 papers which quote from or summarize any of the foregoing.

3 **3. Scope and Purpose of the Order:** The Protective Order shall govern the
4 designation and handling of protected documents produced by any party or non-
5 party in discovery in this litigation, whether by voluntary production or
6 disclosure or in response to any formal discovery procedure, including
7 designation and handling of nonpublic information of a confidential nature. The
8 Protective Order does not affect any party's obligations under the Federal Rules
9 of Civil Procedure to produce documents as required by the rules of discovery
10 or an order of the Court. The purpose of the Protective Order is to facilitate the
11 handling of nonpublic information of a confidential, proprietary, or sensitive
12 nature.

13 **4. Standards for Protected Documents.** Any party or non-party who is
14 required to produce documents or information in discovery in this litigation
15 may designate produced material as protected, including trade secrets,
16 unpublished financial data, technological developments, pricing or cost
17 information, production or sales forecasts or strategy, the terms of executory
18 contracts, commercially sensitive information of a non-public nature,
19 confidential employee and personnel information and documents, confidential
20 healthcare or mental healthcare information and documents, and other
21 confidential and sensitive materials of a similar nature.

22 **5. Protected Documents.** Protected documents are those documents marked as
23 "CONFIDENTIAL" by the producing party or non-party. Protected documents
24 will be covered by the Protective Order and will be used only for the purposes
25

1 of this case, and will not be used by any party, party representative, or counsel
2 for any purpose unrelated to this case.

3 **6. Designating Protected Documents.**

4 a. **Marking Protected Documents.** Protected documents shall be designated
5 confidential by marking them "CONFIDENTIAL" in a size and location that
6 makes the designation readily apparent.

7 b. **Designating Deposition Testimony.** Any party or non-party wishing to
8 designate deposition testimony or deposition exhibits as confidential may do
9 so on the record during the deposition, or within 30 days after receipt of the
10 deposition transcript and exhibits by providing written notice of the
11 designation to the parties and any other affected person. The party making
12 the designation shall be responsible for assuring that those portions of the
13 deposition transcript and exhibits designated as confidential are
14 appropriately identified as such by the reporter.

15 c. **Subsequent Designation.** A protected document produced or disclosed
16 without a "CONFIDENTIAL" designation may be subsequently designated
17 by any party as confidential. In each such case, the designating person shall
18 provide to all other parties written notice of that designation and a copy of
19 the document marked in accord with paragraph (5)(a). No person shall be
20 liable for publicly disclosing a document marked "CONFIDENTIAL" if that
21 disclosure occurred prior to receipt of written notice pursuant to this
22 paragraph.

23 d. A party seeking agreement that certain protected documents should be
24 sealed if filed with the court may seek agreement for that additional
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1 protection. If agreement is reached to apply that level of protection, any
 2 party filing documents entitled to that level of protection must comply with
 3 the applicable Eastern District Local Rules for filing sealed documents.

4 **7. Maintaining Designated Protected Documents.** Any protected document
 5 must be maintained in a manner reasonably calculated to preserve its
 6 confidentiality.

7 **8. Disclosure of Protected Documents.**

8 a. Except as set forth herein or by any subsequent court order, no protected
 9 documents shall be delivered, exhibited, or disclosed to any persons unless
 10 done in a manner in compliance with the Protective Order.

11 b. Protected documents may be delivered, exhibited, or disclosed to the
 12 following persons subject to the limitations in the Protective Order:

13 i. The parties' counsel, including Fluor's outside attorneys and in-house
 14 counsel.

15 ii. Secretaries, paralegal assistants, and other employees of such counsel
 16 who are actively engaged in assisting counsel in the preparation of
 17 these actions.

18 iii. Employees of parties involved solely in one or more aspect of
 19 organizing, filing, coding, copying, scanning, converting, storing or
 20 retrieving data and/or designing programs for handling data connected
 21 with these actions, and to employees of third party contractors
 22 performing one or more of these functions for one or more parties.

23 iv. The parties and their client representatives for purposes related to this
 24 litigation.

- 1 v. Counsel for the United States Department of Energy (DOE) and other
2 appropriate officials of DOE who are involved in litigation review,
3 together with the secretaries, paralegal assistants, and other employees
4 of such counsel and officials.
- 5 vi. Persons noticed for depositions or designated as trial witnesses and
6 their counsel to the extent deemed necessary by counsel for the
7 witnesses' preparation for testimony. Such persons shall be provided
8 with a copy of the Protective Order and advised that they are bound
9 by it.
- 10 vii. The court or court personnel involved in the court's handling of this
11 litigation.
- 12 viii. Outside consultants and experts retained for the purpose of assisting in
13 the preparation of this action.
- 14 ix. Persons retained or engaged for purposes of alternative dispute
15 resolution, including mediators and/or arbitrators.
- 16 c. Before making disclosure of protected documents to an outside consultant or
17 expert, the party must obtain an agreement in writing (per the form attached
18 as Exhibit A) from the outside expert or consultant designating the
19 documents or materials to be disclosed with particularity, and reciting that
20 he or she has read a copy of this Protective Order and agrees to be bound by
21 its provisions.

22 **9. Disclosures to Other Counsel.** Protected documents may be disclosed to
23 counsel who (1) file an appearance for any party in this action; and (2) are
24 actively engaged in the preparation of this action, but only on the conditions
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1 that such counsel shall not use, directly or indirectly, any information from the
 2 confidential documents of another party or non-party in connection with any
 3 commercial or legal activity not directly involved with the prosecution or
 4 defense of this action or otherwise violate the provisions herein.

5 **10. Filing of Protected Documents.** A “CONFIDENTIAL” designation does
 6 not render CONFIDENTIAL material sealed, nor does it amount to a stipulation
 7 that the CONFIDENTIAL material is to be filed under seal.

8 **11. Reference to Protected Documents.** Protected documents may be referred
 9 to in interrogatory answers, motions, briefs, and may be used in depositions and
 10 marked as deposition exhibits in this action. However, no such document or
 11 testimony shall be used for any of these purposes unless it, or the portion of the
 12 court paper in which it is revealed, is appropriately marked CONFIDENTIAL.

13 **12. Producing Parties’ Use of Protected Documents.** Nothing in this Protective
 14 Order limits a producing party's use of its own documents or documents
 15 obtained through means other than discovery requests or subpoenas in this
 16 litigation. Such use shall not be deemed to affect any confidential designation
 17 made under the terms of the Protective Order.

18 **13. Disputes as to Confidentiality Designation**

19 a. **Meet and Confer Requirement.** If, at any time, a party disagrees with the
 20 designation of a protected document, the parties must first attempt to resolve
 21 the dispute informally in a face-to-face or telephonic conference initiated by
 22 the party disputing the designation. If the dispute is not resolved through the
 23 meet-and-confer process within a reasonable time, the party seeking
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 25

1 protection may move for a protective order or the party disputing the
2 designation may present the objection(s) to the court.

3 **b. Status Pending Resolution of Disputes.** Any disputed document or other
4 material must be treated as a protected document under the Protective Order
5 until entry of a court order ruling otherwise.

6 **14. Rights of the Parties.** The Protective Order is without prejudice to the right
7 of any party to apply to the Court for any further protective order relating to any
8 confidential information or for an order permitting disclosure of any
9 confidential information beyond the terms of the Protective Order. Nothing in
10 the Protective Order shall prevent any party or non-party from seeking
11 modification of the Protective Order or from objecting to discovery that it
12 believes to be otherwise improper.

13 **15. Documents for Trial.** After the pretrial conference, the parties must meet
14 and confer to (a) reach an agreement as to the confidentiality of information to
15 be used at trial, and (b) designate documents as trial exhibits. If necessary, the
16 parties or the court will also develop a method for maintaining the
17 confidentiality of such information and documents at trial. At the producing
18 party's request, any document previously designated confidential must be used
19 at trial only in a clean or redacted copy without any such designation.

20 **16. Commencement.** By signature of counsel below, the parties agree to abide
21 by the terms of the Stipulated Protective Order as soon as it has been signed by
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23
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counsel regardless of when the Order is signed by the Court.

DATED THIS 6th DAY OF April 2009.

s/ Edward F. Shea
EDWARD F. SHEA
U.S. District Judge

Presented By:

Halvorson Saunders & Willner, PLLC
Attorneys for Defendant Fluor Hanford, Inc.

S/Michael B. Saunders
Michael B. Saunders, WSBA No. 22230

MacDonald Hoague & Bayless
Attorneys for Plaintiff Duane Hall

S/Mel Crawford
Mel Crawford, WSBA No. 22930

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EXHIBIT A

**AGREEMENT OF EXPERT OR CONSULTANT TO BE BOUND BY
PROTECTIVE ORDER**

The undersigned, _____ (print or type name), an outside expert or consultant retained by _____ (print or type name of party or law firm), in connection with *Hall v. Fluor Hanford, Inc.*, No.: CV-08-5029-EFS, USDC, E.D. Wash., hereby acknowledges that he or she has received a copy of the Protective Order entered in this action, has read same and agrees to be bound by all of the provisions thereof.

The undersigned further acknowledges that he or she has been given access to documents designated as *CONFIDENTIAL* and agrees to be bound by all of the provisions of said Protective Order applicable to such documents:

By: _____

Date: _____